

percent per year of the unpaid principal amount of the loan.

(Authority: 20 U.S.C. 1078, 1082)

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 25746, May 17, 1994; 59 FR 33352, June 28, 1994; 59 FR 61428, Nov. 30, 1994; 64 FR 18978, Apr. 16, 1999; 64 FR 58959, Nov. 1, 1999; 66 FR 34763, June 29, 2001; 71 FR 45703, Aug. 9, 2006; 72 FR 62002, Nov. 1, 2007; 73 FR 63252, Oct. 23, 2008]

**§ 682.301 Eligibility of borrowers for interest benefits on Stafford and Consolidation loans.**

(a) *General.* (1) To qualify for benefits on a Stafford loan, a borrower must demonstrate financial need in accordance with Part F of the Act.

(2) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization—

(i) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(ii) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(iii) (A) Directs the member to pursue the course of study; or

(B) Provides subsistence support to its members.

(3) A Consolidation loan borrower qualifies for interest benefits during authorized periods of deferment on the portion of the loan that does not represent HEAL loans if the loan application was received by the lender—

(i) On or after January 1, 1993 but prior to August 10, 1993;

(ii) On or after August 10, 1993, but prior to November 13, 1997 if the loan consolidates only subsidized Stafford loans; and

(iii) On or after November 13, 1997, for the portion of the loan that repaid subsidized FFEL loans and Direct Subsidized Loans.

(b) *Application for interest benefits.* To apply for interest benefits on a Stafford loan, the student, or the school at the direction of the student, must submit a statement to the lender pursuant to § 682.603. The student must qualify for interest benefits if the eligible institution has determined and docu-

mented the student's amount of need for a loan based on the student's estimated cost of attendance, estimated financial assistance, and expected family contribution as determined under part F of the Act.

(c) *Use of loan proceeds to replace expected family contribution.* A borrower may use the amount of a PLUS, unsubsidized Stafford loan, State sponsored loan, or private program loan obtained for a period of enrollment to replace the expected family contribution for that period of enrollment.

(Approved by the Office of Management and Budget under control number 1845-0020)

(Authority: 20 U.S.C. 1078, 1082, 1087-1)

[57 FR 60323, Dec. 18, 1992, as amended at 58 FR 9120, Feb. 19, 1993; 59 FR 33352, June 28, 1994; 64 FR 18978, Apr. 16, 1999; 64 FR 58959, Nov. 1, 1999]

**§ 682.302 Payment of special allowance on FFEL loans.**

(a) *General.* The Secretary pays a special allowance to a lender on an eligible FFEL loan. The special allowance is a percentage of the average unpaid principal balance of a loan, including capitalized interest computed in accordance with paragraphs (c) and (f) of this section. Special allowance is also paid on the unpaid accrued interest of a loan covered by § 682.215(b)(7) computed in the same manner as in paragraphs (c) and (f), as applicable, except for this purpose the applicable interest rate shall be deemed to be zero.

(b) *Eligible loans.* (1) Except for non-subsidized Federal Stafford loans disbursed on or after October 1, 1981, for periods of enrollment beginning prior to October 1, 1992, or as provided in paragraphs (b)(2), (b)(3), or (e)(1) of this section, FFEL loans that otherwise meet program requirements are eligible for special allowance payments.

(2) For a loan made under the Federal SLS or Federal PLUS Program on or after July 1, 1987 and prior to July 1, 1994, and for any Federal PLUS loan made on or after July 1, 1998 or on or after January 1, 2000 for any period prior to April 1, 2006, or under § 682.209(e) or (f), no special allowance is paid for any period for which the interest rate calculated prior to applying the interest rate maximum for that loan does not exceed—

(i) 12 percent in the case of a Federal SLS or PLUS loan made prior to October 1, 1992;

(ii) 11 percent in the case of a Federal SLS loan made on or after October 1, 1992;

(iii) 10 percent in the case of a Federal PLUS loan made on or after October 1, 1992; or

(iv) 9 percent in the case of a Federal PLUS loan made on or after July 1, 1998.

(3) In the case of a subsidized Stafford loan disbursed on or after October 1, 1992, the Secretary does not pay special allowance on a disbursement if—

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer or master check will not be released from the restricted account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer or master check has not been released from the restricted account maintained by the school before that date.

(c) *Rate.* (1) Except as provided in paragraph (c)(2), (c)(3), or (e) of this section, the special allowance rate for an eligible loan during a 3-month period is calculated by—

(i) Determining the average of the bond equivalent rates of—

(A) The quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H-15 (or its successor) for such 3-month period for a loan for which the first disbursement is made on or after January 1, 2000; or

(B) The 91-day Treasury bills auctioned during the 3-month period for a loan for which the first disbursement is made prior to January 1, 2000;

(ii) Subtracting the applicable interest rate for that loan;

(iii) Adding—

(A)(1) 2.34 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after January 1, 2000;

(2) 2.64 percent to the resulting percentage for a Federal PLUS loan for

which the first disbursement is made on or after January 1, 2000;

(3) 2.64 percent to the resulting percentage for a Federal Consolidation Loan that was made based on an application received by the lender on or after January 1, 2000;

(4) 1.74 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after January 1, 2000 during the borrower's in-school, grace, and authorized period of deferment;

(5) 2.8 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after July 1, 1998 and prior to January 1, 2000;

(6) 2.2 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after July 1, 1998 and prior to January 1, 2000, during the borrower's in-school, grace, and authorized period of deferment;

(7) 2.5 percent to the resulting percentage for a Federal Stafford loan for which the first disbursement is made on or after July 1, 1995 and prior to July 1, 1998 for interest that accrues during the borrower's in-school, grace, and authorized period of deferment;

(B) 3.1 percent to the resulting percentage for—

(1) A Federal Stafford Loan made on or after October 1, 1992 and prior to July 1, 1998, except as provided in paragraph (c)(1)(iii)(A)(7) of this section;

(2) A Federal SLS Loan made on or after October 1, 1992;

(3) A Federal PLUS Loan made on or after October 1, 1992 and prior to July 1, 1998;

(4) A Federal PLUS Loan made on or after July 1, 1998 and prior to October 1, 1998, except that no special allowance shall be paid any quarter unless the rate determined under § 682.202(a)(2)(v)(A) exceeds 9 percent;

(5) A Federal PLUS loan made on or after October 1, 1998 and prior to January 1, 2000, except that no special allowance shall be paid during any quarter unless the rate determined under § 682.202(a)(2)(v)(A) exceeds 9 percent;

(6) A Federal Consolidation Loan for which the application was received by the lender prior to January 1, 2000, except that no special allowance shall be

paid during any quarter on a loan for which the application was received on or after October 1, 1998 unless the average of the bond equivalent rate of the 91-day Treasury bills auctioned during that quarter, plus 3.1 percent, exceeds the rate determined under Section 682.202(a)(4)(iv);

(C) 3.25 percent to the resulting percentage, for a loan made on or after November 16, 1986, but prior to October 1, 1992;

(D) 3.25 percent to the resulting percentage, for a loan made on or after October 17, 1986 but prior to November 16, 1986, for a period of enrollment beginning on or after November 16, 1986;

(E) 3.5 percent to the resulting percentage, for a loan made prior to October 17, 1986, or a loan described in paragraph (c)(2) of this section; or

(F) 3.5 percent to the resulting percentage, for a loan made on or after October 17, 1986 but prior to November 16, 1986, for a period of enrollment beginning prior to November 16, 1986;

(iv) Rounding the result upward to the nearest one-eighth of 1 percent, for a loan made prior to October 1, 1981; and

(v) Dividing the resulting percentage by 4.

(2) The special allowance rate determined under paragraph (c)(1)(iii)(E) of this section applies to loans made or purchased from funds obtained from the issuance of an obligation of the—

(i) Maine Educational Loan Marketing Corporation to the Student Loan Marketing Association pursuant to an agreement entered into on January 31, 1984; or

(ii) South Carolina Student Loan Corporation to the South Carolina National Bank pursuant to an agreement entered into on July 30, 1986.

(3)(i) Subject to paragraphs (c)(3)(iii), (c)(3)(iv), and (e) of this section, the special allowance rate is that provided in paragraph (c)(3)(ii) of this section for a loan made or guaranteed on or after October 1, 1980 that was made or purchased with funds obtained by the holder from—

(A) The proceeds of tax-exempt obligations originally issued prior to October 1, 1993;

(B) Collections or payments by a guarantor on a loan that was made or

purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(i)(A) of this section;

(C) Interest benefits or special allowance payments on a loan that was made or purchased with funds obtained by the holder from obligations described in paragraph (c)(3)(i)(A) of this section;

(D) The sale of a loan that was made or purchased with funds obtained by the holders from obligations described in paragraph (c)(3)(i)(A) of this section; or

(E) The investment of the proceeds of obligations described in paragraph (c)(3)(i)(A) of this section.

(ii) The special allowance rate for a loan described in paragraph (c)(3)(i) is one-half of the rate calculated under paragraph (c)(1) of this section, except that in applying paragraph (c)(1)(iii), 3.5 percent is substituted for the percentages specified therein.

(iii) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section that are made prior to October 1, 1992, may not be less than—

(A) 2.5 percent per year on eligible loans for which the applicable interest rate is 7 percent;

(B) 1.5 percent per year on eligible loans for which the applicable interest rate is 8 percent; or

(C) One-half of 1 percent per year on eligible loans for which the applicable rate is 9 percent.

(iv) The special allowance rate applicable to loans described in paragraph (c)(3)(i) of this section that are made on or after October 1, 1992, may not be less than 9.5 percent minus the applicable interest rate.

(4) Loans made or purchased with funds obtained by the holder from the issuance of tax-exempt obligations originally issued on or after October 1, 1993, and loans made with funds derived from default reimbursement collections, interest, or other income related to eligible loans made or purchased with those tax-exempt funds, do not qualify for the minimum special allowance rate specified in paragraph (c)(3)(iii) or (iv) of this section, and are not subject to the 50 percent limitation

on the maximum rate otherwise applicable to loans made with tax-exempt funds.

(5) For purposes of paragraphs (c)(3) and (c)(4), a loan is purchased with funds described in those paragraphs when the loan is refinanced in consideration of those funds.

(d) *Termination of special allowance payments on a loan.* (1) The Secretary's obligation to pay special allowance on a loan terminates on the earliest of—

(i) The date a borrower's loan is repaid;

(ii) The date a borrower's loan check is returned uncashed to the lender;

(iii) The date a lender receives payment on a claim for loss on the loan;

(iv) The date a loan ceases to be guaranteed or ceases to be eligible for reinsurance under this part, with respect to that portion of the loan that ceases to be guaranteed or reinsured, regardless of whether the lender has filed a claim for loss on the loan with the guarantor;

(v) The 60th day after the borrower's default on the loan, unless the lender files a claim for loss on the loan with the guarantor together with all required documentation, on or before the 60th day;

(vi) The 120th day after the date of disbursement, if—

(A) The loan check has not been cashed on or before that date; or

(B) the loan proceeds disbursed by electronic funds transfer or master check in accordance with § 682.207(b)(1)(ii) (B) and (C) have not been released from the restricted account maintained by the school on or before that date;

(vii) The 30th day after the date the lender received a returned claim from the guaranty agency on a loan submitted by the deadline specified in (d)(1)(v) of this section for loss on the loan to the lender due solely to inadequate documentation unless the lender files a claim for loss on the loan with the guarantor, together with all required documentation, prior to the 30th day; or

(viii) The date on which the lender determines the loan is legally unenforceable based on the receipt of an identity theft report under § 682.208(b)(3).

(2) In the case of a loan disbursed on or after October 1, 1992, the Secretary does not pay special allowance on a loan if—

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer or master check will not be released from the account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer or master check has not been released from the account maintained by the school before that date.

(3) Section 682.413 sets forth the circumstances under which a lender may be required to repay the special allowance received on a loan guaranteed by a guaranty agency.

(e) *Limits on special allowance payments on loans made or purchased with funds derived from tax-exempt obligations.*

(1) *General.* (i) The Secretary pays a special allowance on a loan described in paragraph (c)(3) or (c)(4) of this section that is held by or on behalf of an Authority only if the loan meets the requirements of § 682.800.

(ii) The Secretary pays a special allowance at the rate prescribed in paragraph (c)(1) or (c)(3) of this section on a loan described in paragraph (c)(3)(i) of this section that is held by or on behalf of an Authority in accordance with paragraphs (e)(2) through (e)(5) of this section, as applicable. References to "loan" or "loans" in paragraphs (e)(2) through (e)(5) include only loans described in paragraph (c)(3)(i).

(2) *Effect of Refinancing on Special Allowance Payments.* Except as provided in paragraphs (e)(3) through (e)(5) of this section—

(i) The Secretary pays a special allowance at the rate prescribed in paragraph (c)(3) of this section to an Authority that holds a legal or equitable interest in the loan that is pledged or otherwise transferred in consideration of—

(A) Funds listed in paragraph (c)(3)(i) of this section;

(B) Proceeds of a tax-exempt refunding obligation that refinances a debt that—

(1) Was first incurred pursuant to a tax-exempt obligation originally issued prior to October 1, 1993;

(2) Has been financed continuously by tax-exempt obligation.

(ii) The Secretary pays a special allowance to an Authority that holds a legal or equitable interest in the loan that is pledged or otherwise transferred in consideration of funds other than those specified in paragraph (e)(2)(i) of this section either—

(A) At the rate prescribed in paragraph (c)(1) of this section, if—

(1) The prior tax-exempt obligation is retired; or

(2) The prior tax-exempt obligation is defeased by means of obligations that the Authority certifies in writing to the Secretary bears a yield that does not exceed the yield restrictions of section 148 of the Internal Revenue Code and the regulations thereunder, or

(B) At the rate prescribed in paragraph (c)(3) of this section.

(3) *Loans affected by transactions or events after September 30, 2004.* The Secretary pays a special allowance to an Authority at the rate prescribed in paragraph (c)(1) of this section if, after September 30, 2004—

(i) The loan is refinanced with funds other than those listed in paragraph (e)(2)(i) of this section;

(ii) The loan is sold or transferred to any other holder; or

(iii)(A) The loan is financed by a tax-exempt obligation included in the sources in paragraph (e)(2)(i), and

(B) That obligation matures, is refunded, is defeased, or is retired, whichever occurs earliest.

(4) *Loans Affected by Transactions After February 7, 2006.* Except as provided in paragraph (e)(5) or (f) of this section, the Secretary pays a special allowance at the rate prescribed in paragraph (c)(1) of this section on any loan—

(i) That was made or purchased on or after February 8, 2006, or

(ii) That was not earning, on February 8, 2006, a quarterly rate of special allowance determined under paragraph (c)(3) of this section.

(5) *Loans affected by transactions after December 30, 2010.* (i) The Secretary pays a special allowance to a holder described in paragraph (e)(5)(ii) of this section at the rate prescribed in paragraph (c)(3) of this section only on a loan—

(A) That was made or purchased prior to December 31, 2010, or

(B) That was earning, before December 31, 2010, a quarterly rate of special allowance determined under paragraph (c)(3) of this section.

(ii) A holder for purposes of this paragraph is an entity that—

(A) On February 8, 2006 and during the quarter for which special allowance is determined under this paragraph—

(1) Is a unit of State or local government or a private nonprofit entity, and

(2) Is not owned or controlled by, or under common ownership or control by, a for-profit entity; and

(B) In the most recent quarterly special allowance payment prior to September 30, 2005, held, directly or through any subsidiary, affiliate, or trustee, a total unpaid balance of principal of \$100,000,000 or less for which special allowance was determined and paid under paragraph (c)(3) of this section.

(f) *Special allowance rates for loans made on or after October 1, 2007.* With respect to any loan for which the first disbursement of principal is made on or after October 1, 2007, other than a loan described in paragraph (e)(5) of this section, the special allowance rate for an eligible loan made during a 3-month period is calculated according to the formulas described in paragraphs (f)(1) and (f)(2) of this section.

(1) Except as provided in paragraph (f)(2) of this section, the special allowance formula shall be computed by—

(i) Determining the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H-15 (or its successor) for such 3-month period;

(ii) Subtracting the applicable interest rate for that loan;

(iii) Adding—

(A) 1.79 percent to the resulting percentage for a Federal Stafford loan;

(B) 1.19 percent to the resulting percentage for a Federal Stafford Loan during the borrower's in-school period, grace period and authorized period of deferment;

(C) 1.79 percent to the resulting percentage for a Federal PLUS loan; and

(D) 2.09 percent to the resulting percentage for a Federal Consolidation loan; and

(iv) Dividing the resulting percentage by 4.

(2) For loans held by an eligible not-for-profit holder as defined in paragraph (f)(3) of this section, the special allowance formula shall be computed by—

(i) Determining the average of the bond equivalent rates of the quotes of the 3-month commercial paper (financial) rates in effect for each of the days in such quarter as reported by the Federal Reserve in Publication H-15 (or its successor) for such 3-month period;

(ii) Subtracting the applicable interest rate for that loan;

(iii) Adding—

(A) 1.94 percent to the resulting percentage for a Federal Stafford loan;

(B) 1.34 percent to the resulting percentage for a Federal Stafford Loan during the borrower's in-school period, grace period and authorized period of deferment;

(C) 1.94 percent to the resulting percentage for a Federal PLUS loan; and

(D) 2.24 percent to the resulting percentage for a Federal Consolidation loan; and

(iv) Dividing the resulting percentage by 4.

(3) *Eligible Not-for-Profit Holder.* (i) For purposes of this section, the term "eligible not-for-profit holder" means an eligible lender under section 435(d) of the Act (except an eligible institution) that requests special allowance payments from the Secretary and that is—

(A) A State, or a political subdivision, authority, agency, or other instrumentality thereof, including such entities that are eligible to issue bonds described in 26 CFR 1.103-1, or section 144(b) of the Internal Revenue Code of 1986;

(B) An entity described in section 150(d)(2) of the Internal Revenue Code of 1986 that has not made the election

described in section 150(d)(3) of that Code;

(C) An entity described in section 501(c)(3) of the Internal Revenue Code of 1986; or

(D) A trustee acting as an eligible lender on behalf of an entity that is not an eligible institution and that is a State or non-profit entity or a special purpose entity for a State or non-profit entity.

(ii) For purposes of paragraph (f)(3) of this section—

(A) The term "State or non-profit entity" means an entity described in paragraph (f)(3)(i)(A), (f)(3)(i)(B), or (f)(3)(i)(C) of this section, regardless of whether such entity is an eligible lender under section 435(d) of that Act.

(B) The term "special purpose entity" means an entity established for the limited purpose of financing the acquisition of loans from or at the direction of a State or non-profit entity, or servicing and collecting such loans, and that is—

(1) An entity established by such State or non-profit entity, or

(2) An entity established by an entity described in paragraph (f)(3)(ii)(B)(1) of this section.

(C) A special purpose entity is a "related special purpose entity" with respect to a State or non-profit entity if it holds any interest in loans acquired from or at the direction of that State or non-profit entity or from a special purpose entity established by that State or non-profit entity.

(iii) An entity that otherwise qualifies under paragraph (f)(3)(i) of this section shall not be considered an eligible not-for-profit holder unless such entity—

(A) Was a State or non-profit entity and an eligible lender under section 435(d) of the Act, other than a school lender, and on or before September 27, 2007 had made or acquired a FFEL loan, unless the State waives this requirement under paragraph (f)(3)(iv) of this section; or

(B) Is acting as an eligible lender trustee on behalf of a State or non-profit entity that was the sole beneficial owner of a loan eligible for a special allowance payment on September 27, 2007.

(iv) Subject to the provisions of section 435(d)(1)(D) of the Act, a State may waive the requirement of paragraph (f)(3)(iii)(A) of this section to identify a new eligible not-for-profit holder pursuant to a written application filed in accordance with paragraph (f)(3)(x) of this section, for the purposes of carrying out a public purpose of the State, except that a State may not designate a trustee for this purpose.

(v) A State or non-profit entity, and a trustee to the extent acting on behalf of such an entity or its related special purpose entity, shall not be an eligible not-for-profit holder if the State or non-profit entity or its related special purpose entity is owned or controlled, in whole or in part, by a for-profit entity. For purposes of this paragraph, a for-profit entity has ownership and control of a State or non-profit entity, or its related special purpose entity, if—

(A) The for-profit entity is a member or shareholder of a State or non-profit entity or related special purpose entity that is a membership or stock corporation, and the for-profit entity has sufficient power to control the State or non-profit entity or its special purpose entity;

(B) The for-profit entity employs or appoints individuals that together constitute a majority of the State, non-profit, or special purpose entity's board of trustees or directors, or a majority of such board's audit committee, executive committee, or compensation committee; or

(C) For a State, non-profit, or special purpose entity that has no board of trustees or directors and associated committees of such, the for-profit entity is authorized by law, agreement, or otherwise to approve decisions by the entity regarding its audits, investments, hiring, retention, or compensation of officials, unless the Secretary determines that the particular authority to approve such decisions is not likely to affect the integrity of those decisions.

(vi) For purposes of paragraph (f)(3) of this section—

(A) A for-profit entity has sufficient power to control a State or non-profit entity or its related special purpose entity, if it possesses directly, or rep-

resents, either alone or together with other persons, under a voting trust, power of attorney, proxy, or similar agreement, one or more persons who hold, individually or in combination with the other person represented or the persons representing them, a sufficient voting percentage of the membership interests or voting securities to direct or cause the direction of the management and policies of the State or non-profit entity or its related special purpose entity.

(B) An individual is deemed to be employed or appointed by a for-profit entity if the for-profit entity employs a family member, as defined in § 600.21(f), of that individual, unless the Secretary determines that the particular nature of the family member's employment is not likely to affect the integrity of decisions made by the board or committee member.

(C) "Beneficial owner" (including "beneficial ownership" and "owner of a beneficial interest") means the entity that has those rights with respect to the loan or income from the loan that are the normal incidents of ownership, including the right to receive, possess, use, and sell or otherwise exercise control over the loan and the income from the loan, subject to any rights granted and limitations imposed in connection with or related to the granting of a security interest described in paragraph (f)(3)(ix) of this section, and subject to any limitations on such rights under the Act as a result of such entity not qualifying as an eligible lender or holder under the Act.

(D) "Sole owner" means the entity that has all the rights described in paragraph (f)(3)(vi)(C) of this section, which may be subject to the rights and limitations described in paragraph (f)(3)(vi)(C), to the exclusion of any other entity, with respect both to a loan and the income from a loan.

(vii)(A) No State or non-profit entity, and no trustee to the extent acting on behalf of such a State or non-profit entity or its related special purpose entity, shall be an eligible not-for-profit holder with respect to any loan or income from any loan on which payment is claimed at the rate established under paragraph (f)(2) of this section, unless such State or non-profit entity or its

related special purpose entity is the sole owner of the beneficial interest in such loan and the income from such loan.

(B) A State or non-profit entity that had sole ownership of the beneficial interest in a loan and the income from such loan is considered to retain that sole ownership for purposes of paragraph (f)(3)(vii)(A) of this section if such entity transferred beneficial interest in the loan to its related special purpose entity and no party other than that State or non-profit entity or its related special purpose entity owns any beneficial interest or residual ownership interest in the loan or income from the loan.

(viii)(A) A trustee described in paragraph (f)(3)(i)(D) of this section shall not receive compensation as consideration for acting as an eligible lender on behalf of a State or non-profit entity or its related special purpose entity in excess of reasonable and customary fees paid for providing the particular service or services that the trustee undertakes to provide to such entity.

(B) Fees are reasonable and customary, for purposes of this paragraph (f)(3)(viii), if they do not exceed the amounts received by the trustee for similar services with regard to similar portfolios of loans of that State or non-profit entity or its related special purpose entity that are not eligible to receive special allowance at the rate established under paragraph (f)(2) of this section, or if they do not exceed an amount as determined by such other method requested by the State or non-profit entity that the Secretary considers reliable.

(C) Loans owned by the State or non-profit entity or a related special purpose entity for which the trustee receives fees in excess of the amount permitted by paragraph (f)(3)(viii) of this section cease to qualify for a special allowance payment at the rate prescribed under paragraph (f)(2) of this section.

(ix) For purposes of paragraph (f)(3) of this section, if a State or non-profit entity, its related special purpose entity, or a trustee acting on behalf of any of these entities, grants a security interest in, or otherwise pledges as collateral, a loan, or the income from a loan, to secure a debt obligation for

which such State or non-profit entity, or its related special purpose entity, is the issuer of that debt obligation, none of these entities shall, by such action—

(A) Be deemed to be owned or controlled, in whole or in part, by a for-profit entity; or

(B) Lose its status as the sole owner of a beneficial interest in a loan and the income from a loan.

(x) *Not-for-Profit Holder Eligibility Determination.* A State or non-profit entity that seeks to qualify as an eligible not-for-profit holder, either in its own right or through a trust agreement with an eligible lender trustee, must provide to the Secretary—

(A) A certification on the State or non-profit entity's letterhead signed by the State or non-profit entity's Chief Executive Officer (CEO) which—

(1) States the basis upon which the entity qualifies as a State or non-profit entity;

(2) Includes documentation establishing its status as a State or non-profit entity;

(3) Includes the name and lender identification number(s) of the entities for which designation is being certified;

(4) Includes the name of any related special purpose entities that hold any interest in any loan on which special allowance is claimed under paragraph (f)(2) of this section, describes the role of such entity with respect to the loans, and provides with respect to that entity the certifications and documentation described in paragraph (f)(3)(x)(A) and (B) of this section; and

(5) For an entity establishing status under section 150(d) of the Internal Revenue Code of 1986, includes copies of the requests of the State or political subdivision or subdivisions thereof or requirements described in section 150(d)(2) of the Internal Revenue Code and the CEO's additional certification that the entity has not elected under section 150(d)(3) of the Internal Revenue Code to cease its status as a qualified scholarship funding corporation.

(B) A separately submitted certification or opinion by the State or non-profit entity's external legal counsel or the office of the attorney general of the State, with supporting documentation



that shows that the State or non-profit entity—

(1) Is constituted a State entity by operation of specific State law;

(2) Has been designated by the State or one or more political subdivisions of the State to serve as a qualified scholarship funding corporation under section 150(d) of the Internal Revenue Code, has not made the election described under section 150(d)(3) of the Internal Revenue Code, and is incorporated under State law as a not-for-profit organization;

(3) Is incorporated under State law as a not-for-profit organization or is an entity described in section 503(c)(3) of the Internal Revenue Code; or

(4) Has in effect a relationship with an eligible lender under which the lender is acting as trustee on behalf of the State or non-profit entity.

(xi) *Annual Certification by Eligible Not-for-Profit Holder.* A State or non-profit entity that seeks to retain its eligibility as an eligible not-for-profit holder, either in its own right or through a trust agreement with an eligible lender trustee, must annually provide to the Secretary—

(A) A certification on the State or non-profit entity's letterhead signed by the State or non-profit entity's Chief Executive Officer (CEO) which—

(1) Includes the name and lender identification number(s) of the entities for which designation is being recertified;

(2) States that the State or non-profit entity has not altered its status as a State or non-profit entity since its prior certification to the Secretary, or, if it has altered its status, describes any such alterations; and

(3) States that the State or non-profit entity continues to satisfy the requirements of an eligible not-for-profit holder, either in its own right or through a trust agreement with an eligible lender trustee; and

(B) A copy of its IRS Form 990, if applicable, and that of any related special purpose entity that holds an interest in loans on which it seeks to claim special allowance at the rate provided under paragraph (f)(2) of this section, at the same time these returns are filed with the Internal Revenue Service.

(xii) *Not-for-Profit Holder Change of Status.* Within 10 business days of becoming aware of the occurrence of a change that may result in a State or non-profit entity that has been designated an eligible not-for-profit holder, either directly or through an eligible lender trustee, losing that eligibility, the State or non-profit entity must—

(A) Submit details of the change to the Secretary; and

(B) Cease billing for special allowance at the rate established under paragraph (f)(2) of this section for the period from the date of the change that may result in it no longer being eligible for the rate established under paragraph (f)(2) of this section to the date of the Secretary's determination that such entity has not lost its eligibility as a result of such change; provided, however, that in the quarter following the Secretary's determination that such eligible not-for-profit holder has not lost its eligibility, the eligible not-for-profit holder may submit a billing for special allowance during the period from the date of the change to the date of the Secretary's determination equal to the difference between special allowance at the rate established under paragraph (f)(2) of this section and the amount it actually billed at the rate established under paragraph (f)(1) of this section.

(xiii) In the case of a loan for which the special allowance payment is calculated under paragraph (f)(2) of this section and that is sold by the eligible not-for-profit holder holding the loan to an entity that is not an eligible not-for-profit holder, the special allowance payment for such loan shall, beginning on the date of the sale, no longer be calculated under paragraph (f)(2) and shall be calculated under paragraph (f)(1) of this section instead.

(4) In the case of a loan for which the special allowance payment is calculated under paragraph (f)(2) of this section and that is sold by the eligible not-for-profit holder holding the loan to an entity that is not an eligible not-for-profit holder, the special allowance payment for such loan shall, beginning on the date of the sale, no longer be calculated under paragraph (f)(2) and

shall be calculated under paragraph (f)(1) of this section instead.

(g) For purposes of this section—

(1) A tax-exempt obligation is an obligation the income of which is exempt from taxation under the Internal Revenue Code of 1986 (26 U.S.C.);

(2) The date on which an obligation is considered to be “originally issued” is determined under § 682.302(f)(2)(i) or (ii), as applicable.

(i) An obligation issued to obtain funds to make loans, or to purchase a legal or equitable interest in loans, including by pledge as collateral for that obligation, is considered to be originally issued on the date issued.

(ii) A tax-exempt obligation that refunds, or is one of a series of tax-exempt refundings with respect to a tax-exempt obligation described in § 682.302(f)(2)(i), is considered to be originally issued on the date on which the obligation described in § 682.302(f)(2)(i) was issued.

(3) A loan is refinanced when an Authority that has pledged the loan as collateral for an obligation of that Authority retains an interest in the loan, but causes the loan to be released from the lien of that obligation and pledged as collateral for a different obligation of that Authority.

(4) References to an Authority include a successor entity that may not qualify as an Authority under § 682.200(b).

[57 FR 60323, Dec. 18, 1992, as amended at 59 FR 25746, May 17, 1994; 59 FR 33353, June 28, 1994; 59 FR 61428, Nov. 30, 1994; 64 FR 18978, Apr. 16, 1999; 64 FR 58626, Oct. 29, 1999; 66 FR 34763, June 29, 2001; 68 FR 75429, Dec. 31, 2003; 71 FR 45703, Aug. 9, 2006; 71 FR 64398, Nov. 1, 2006; 72 FR 62002, Nov. 1, 2007; 73 FR 63252, Oct. 23, 2008]

**§ 682.303 [Reserved]**

**§ 682.304 Methods for computing interest benefits and special allowance.**

(a) *General.* The Secretary pays a lender interest benefits and special allowance on eligible loans on a quarterly basis. These calendar quarters end on March 31, June 30, September 30, and December 31 of each year. A lender may use either the average daily balance method or the actual accrual method to determine the amount of interest benefits payable on a lender's

loans. A lender shall use the average daily balance method to determine the balance on which the Secretary computes the amount of special allowance payable on its loans.

(b) *Average daily balance method for interest benefits.* (1) Under this method, the lender adds the unpaid principal balance outstanding on all loans qualifying for interest benefits at each actual interest rate for each day of the quarter, divides the sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for qualified loans outstanding at each actual interest rate.

(2) The Secretary computes the interest benefits due on all qualified loans at each actual interest rate by multiplying the average daily balance thereof by the actual interest rate, multiplying this result by the number of days in the quarter, and then dividing this result by the actual number of days in the year.

(c) *Actual accrual method for interest benefits.* (1) Under this method, the lender computes the total unpaid principal balance outstanding on all qualified loans at each actual interest rate on each day of the quarter, multiplies this result by the actual interest rate, and divides this result by the actual number of days in the year, or, alternatively, 365.25 days. A lender who chooses to divide by 365.25 days must do so for four consecutive years.

(2) The interest benefits due for a quarter equal the sum of the daily interest benefits due, computed under paragraph (c)(1) of this section, for each day of the quarter.

(d) *Average daily balance method for special allowance.* (1) To compute the average daily balance outstanding for purposes of special allowance, the lender adds the unpaid principal balance outstanding on all qualified loans at each applicable interest rate for each day of the quarter, divides this sum by the number of days in the quarter, and rounds the result to the nearest whole dollar. The resulting figure is the average daily balance for the quarter for qualifying loans at each applicable interest rate.